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In the Supreme Court of the United States

OCTOBER TERM, 1975

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, ET AL., APPELLANTS

v.

MARIA C. FLORES DE OTERO

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS, ET AL., APPELLANTS

v.

SERGIO PEREZ NOGUEIRO

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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INDEX

	Page
Question presented	1
Statutes involved	2
Introduction and summary of argument	3
Argument:	
The people of Puerto Rico are protected by 42 U.S.C. 1983 and 28 U.S.C. 1343(3) and (4)	
A. The language of 42 U.S.C. 1983 and 28 U.S.C. 1343 applies to Puerto Rico	7
B. The history of sections 1983 and 1343 (3) is consistent with their application to Puerto Rico	9
C. Fundamental constitutional rights apply to the people of Puerto Rico	12
D. The federal district court in Puerto Rico has long been empowered to enforce section 1983	17
E. The Commonwealth's status is not analogous to that of the District of Columbia for purposes of section 1983	22
Conclusion	26

CITATIONS

Cases:	
Balzac v. *Porto Rico*, 258 U.S. 298	4, 13, 14, 18
Bolling v. *Sharpe*, 347 U.S. 497	22
Caribtow v. *Occupational Safety and Health Review Commission*, 493 F. 2d 1064	21
Calero-Toledo v. *Pearson Yacht Leasing Co.*, 416 U.S. 663	5, 9, 15, 16, 24

597-896—75——1

	Page
District of Columbia v. *Carter*, 409 U.S. 418	4, 5, 6, 9, 10, 12, 22, 23
Downes v. *Bidwell*, 182 U.S. 244	4, 6, 13, 14, 15
Frontiero v. *Richardson*, 411 U.S. 677	22
Graham v. *Richardson*, 403 U.S. 365	2
Griffiths, In re, 413 U.S. 717	3
Hagans v. *Lavine*, 415 U.S. 523	8
Hines v. *Lavidowitz*, 312 U.S. 52	2
Home Telephone and Telegraph Co. v. *City of Los Angeles*, 227 U.S. 278	12
Jones v. *Alfred H. Mayer Co.*, 392 U.S. 409	8
	8
Lynch v. *Household Finance Corp.*, 405 U.S. 538	9, 10, 11, 18
Monroe v. *Pape*, 365 U.S. 167	9, 12
Montalvo v. *Colon*, 377 F. Supp. 1332	4
Mora v. *Mejias*, 206 F. 2d 377	15, 24
Munoz v. *Porto Rico Ry. Light & Power Co.*, 83 F. 2d 262	18
Ortiz v. *Hernandez Colon*, 511 F. 2d 1080	24
Schneider v. *Rusk*, 377 U.S. 163	22
Shapiro v. *Thompson*, 394 U.S. 618	22
Stainback v. *Mo Hock Ke Lok Po*, 336 U.S. 368	24
Sugarman v. *Dougall*, 413 U.S. 634	2, 3
Traux v. *Raich*, 239 U.S. 33	2
United States v. *Price*, 383 U.S. 787	21, 26
Zwickler v. *Koota*, 389 U.S. 241	12, 26
Constitution and statutes:	
United States Constitution:	
Art. I, Sec. 8, cl. 1	13
Art. I, Sec. 8, cl. 17	23
Art. IV	7, 12, 22

	Page
Art. IV, Sec. 2	15
Art. IV, Sec. 3	23
Art. IV, Sec. 3, cl. 2	10
Fifth amendment	7, 10, 22
Fourteenth amendment	4, 7, 9, 22
1 Revision of U.S. Stat., title XIII, pp. 317, 359 (1872 draft)	10
Revised Statutes (1874):	
Secs. 530–559	11
Sec. 551	11
Sec. 563(12)	10, 11, 18
Sec. 608	11
Sec. 629(16)	10, 11, 18
Secs. 1865–1868	11
Sec. 1910	11
Sec. 1957	11
Sec. 1979	10, 11, 18
Revised Statutes (1878):	
Sec. 1891	15
Sec. 1911	11
P.L. 600, 64 Stat. 319, 48 U.S.C. 731b–731d	6, 16, 19, 21, 23
Sec. 731b	23
Sec. 731d, note	16
P.L. 88–271, 78 Stat. 17	17
17 Stat. 13	18
17 Stat. 13, Sec. 1	9
30 Stat. 1754	31
31 Stat. 77	6
31 Stat. 80, Sec. 14	13
31 Stat. 84	18
32 Stat. 691	15
36 Stat. 1087	18
39 Stat. 951	15

	Page
39 Stat. 954, Sec. 9	21
39 Stat. 965	19
61 Stat. 772–773	15
66 Stat. 327	16
80 Stat. 764	19
8 U.S.C. 1101(a)(38)	2
18 U.S.C. 242	26
28 U.S.C. 119, note	19
28 U.S.C. 1258	5
28 U.S.C. 1331	4, 5
28 U.S.C. 1332	4
28 U.S.C. 1343	3, 4, 26
28 U.S.C. 1343(3)	*passim*
28 U.S.C. 1343(4)	3, 6, 7, 8, 26
28 U.S.C. 2254	4
28 U.S.C. 2281	9, 24
42 U.S.C. 1983	*passim*
48 U.S.C. 734	21
20 L.P.R.A. 689 (1973 Cum. Supp.)	2
Miscellaneous:	
Compact of Permanent Union between Puerto Rico and the United States, Ad Hoc Advisory Group on Puerto Rico (August 1975)	17
Art. 1	26
Art. 2(c)(4)	17
Art. 12	17
Art. 16	19
33 Cong. Rec. 1946 (1900)	13
33 Cong. Rec. 2473–2474 (1900)	13
33 Cong. Rec. 2658–2659 (1900)	13
33 Cong. Rec. 3690 (1900)	13
93 Cong. Rec. 10402 (1947)	16

	Page
Hart and Wechsler, *The Federal Courts and the Federal System* (2d ed. 1973)	11
H.R. 3309, 80th Cong., 1st Sess. (1947)	15
H.R. 3999, 89th Cong., 1st Sess. (1965)	19
H.R. Rep. No. 291, 85th Cong., 1st Sess. (1957)	8
H.R. Rep. 135, 89th Cong., 1st Sess. (1965)	19
Leibowitz, *The Applicability of Federal Law to the Commonwealth of Puerto Rico*, 56 Geo. L. J. 219 (1967)	16
Magruder, *The Commonwealth Status of Puerto Rico*, 15 U. Pitt. L. Rev. 1 (1953)	16, 26
S. Rep. No. 249, 56th Cong., 1st Sess. (1900)	13
S. Rep. No. 422, 80th Cong., 1st Sess.	16
Status of Puerto Rico, Report of the United States–Puerto Rico Commission on the Status of Puerto Rico (1966)	16

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This brief is submitted in response to the Court's invitation dated May 27, 1975.

QUESTION PRESENTED

The United States will discuss the following question:

Whether the United States District Court for Puerto Rico may entertain civil actions under 42

U.S.C. 1983 and 28 U.S.C. 1343(3) and (4) to redress alleged deprivations of constitutional rights by officials of the Commonwealth of Puerto Rico acting under color of the laws of the Commonwealth.[1]

STATUTES INVOLVED

20 L.P.R.A. 689 (1973 Cum. Supp.) is reproduced at Appendix E to the Jurisdictional Statement.

42 U.S.C. 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

[1] Two other questions are presented:

If 42 U.S.C. 1983 and 28 U.S.C. 1343(3) and (4) are applicable, whether the federal district court should have abstained from deciding the constitutionality of the Commonwealth statute under which the defendants acted, until it was authoritatively construed by the courts of the Commonwealth; and

whether the Commonwealth's statute barring the licensing of alien engineers and architects from private employment is invidiously discriminatory.

The considerations bearing on the abstention issue have been thoroughly developed by the parties. As to the substantive issue, we note only that at present authority to admit or exclude aliens into the Commonwealth is vested exclusively in the federal government. 8 U.S.C. 1101(a)(38). Thus, Puerto Rico at present is subject to the same limitations with respect to the regulation of aliens as the States. See *Truax* v. *Raich*, 239 U.S. 33, 42; *Hines* v. *Davidowitz*, 312 U.S. 52, 63; *Graham* v. *Richardson*, 403 U.S. 365, 372; *Sugarman* v. *Dougall*, 413 U.S. 634; *In re Griffiths*, 413 U.S. 717. In two cases presently pending in this Court for reargument the United States is contending that its broad and exclusive powers over aliens and immigration warrant use of the rational basis standard to assess its regulation of aliens rather than the "compelling interest" criterion applied to the States. See our briefs in *Hampton* v. *Mow Sun Wong*, No. 73-1596, and *Weinberger* v. *Diaz*, No. 73-1046.

28 U.S.C. 1343 provides:

> The district courts shall have original jurisdiction for any civil action authorized by law to be commenced by any person:
>
> * * * * *
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
>
> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

INTRODUCTION AND SUMMARY OF ARGUMENT

That 42 U.S.C. 1983 and 28 U.S.C. 1343(3) apply in the Commonwealth of Puerto Rico is apparent from the language and purpose of those statutes, the past relationship between Puerto Rico and the United States, and the present status of the Commonwealth in the federal system.

The Commonwealth (Br. 6–10) does not question that applicable provisions[2] of the federal Constitution are effective in Puerto Rico. It contends, rather, that the consensual arrangements between the Congress and the people of Puerto Rico which, in 1952, established the Commonwealth within the federal system, render Sections 1983 and 1343 inapplicable. The Commonwealth is said to be analogous to the District of Columbia, whose unique place in the federal system puts it outside the concept of "State or Territory" in Section 1983. *District of Columbia* v. *Carter,* 409 U.S. 418.

The Commonwealth seems to contend that claims for redress of "rights, privileges, or immunities secured by the Constitution and laws" otherwise embraced in Section 1983 may be asserted in the federal district court in Puerto Rico only under that court's general federal question (28 U.S.C. 1331), diversity (28 U.S.C. 1332), or habeas corpus (28 U.S.C. 2254) jurisdiction (Com. Br. 6); or in actions in the Commonwealth's courts, which have both the duty and the power to protect federally secured rights. The latter is said to be a wholly adequate remedy because such actions are subject to review in this Court on

[2] The term "applicable provisions" reflects decisions of this Court which hold certain provisions of the Constitution not involving fundamental rights inapplicable to Puerto Rico. *Downes* v. *Bidwell*, 182 U.S. 244; *Balzac* v. *Porto Rico*, 258 U.S. 298. It has been suggested that the fundamental personal rights applicable in Puerto Rico closely approximated the guarantees in the Bill of Rights held applicable to the States under the Fourteenth Amendment. *Montalvo* v. *Colon*, 377 F. Supp. 1332 (D.P.R.; 3-judge court).

petition for a writ of certiorari to the Supreme Court of the Commonwealth under 28 U.S.C. 1258 (Com. Br. 9).[3]

With full respect for the Commonwealth's special place under the federal Constitution, we are constrained to disagree. In our view, the people of the Commonwealth are entitled to the same remedies for protection of their rights under the Constitution as the people of the fifty States. Anything less would be inconsistent with Sections 1983 and 1343(3), with the Commonwealth's present status, and with the intent Congress manifested in conferring on the United States District Court for Puerto Rico the same powers and responsibilities exercised by the federal courts in the several States. We submit that, as in the case of the federal territories, "the problem of enforcement of civil rights in [the Commonwealth is] more similar to the problem as it existed in the States than in the District of Columbia." *District of Columbia* v. *Carter,* 409 U.S. 418, 431.

Section 1983 provides a substantive remedy for the deprivation of rights secured by the Constitution and laws under color of the law of "any State or Territory" to persons within the jurisdiction of the United States. Jurisdiction to enforce these provisions is con-

[3] Whether acts by Commonwealth officials under color of Commonwealth law are within Section 1343 was a question expressly reserved by this Court in *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663, 677, n. 11. That course is open here also, since the jurisdiction of the district court could be sustained under 28 U.S.C. 1331: the claims arise under the Constitution and the value of an engineer's license presumably exceeds the $10,000 amount-in-controversy requirement.

ferred on the federal courts by 28 U.S.C. 1343 (3) and (4). These statutes apply to Puerto Rico as a matter of their plain language and their history. Although Section 1983 was originally enacted in 1871 because of conditions in the post-civil war South, it was extended in 1874 to all federal territories as well, because practical control of far-distant territorial officials by Congress was infeasible. *Carter, supra,* 409 U.S. at 430–431.

When Puerto Rico was acquired by the United States from Spain in 1898 its people came within the Constitution's fundamental protections for individual rights. *Downes* v. *Bidwell*, 182 U.S. 244, 283. This protection was reinforced when Puerto Ricans became citizens of the United States in 1917, and continued when the present arrangement in the nature of a compact between Congress and the people of Puerto Rico under P.L. 600, 64 Stat. 319, resulted in establishment of the Commonwealth.

With the establishment of civil government under the American flag in the Foraker Act of 1900 (31 Stat. 77), a United States district court, separate and distinct from the local court system, was established. Its original jurisdiction was identical to the jurisdiction of the lower federal courts in the States, and today its judges, with life tenure, exercise the same jurisdiction, powers and responsibilities as do all other United States district courts. These include full power under 28 U.S.C. 1343(3) and (4) to enforce Section 1983 against local officials.

The *Carter* case recognized that Section 1983

applies to the States under the Fourteenth Amendment and Territories under Article IV. Unconstitutional discrimination by Commonwealth officials can be reached whether the Commonwealth be viewed for purposes of Section 1983, as a State or Territory, since the people of Puerto Rico are entitled to equal protection of the laws under the Due Process Clause of the Fifth Amendment, if not the Fourteenth Amendment. While the Commonwealth, like the District of Columbia, occupies a *sui generis* position in the federal system, it is not analogous to the District constitutionally, historically, or under its existing relationship with the United States. Although not a State in the constitutional sense, it is a State in the political sense of that term, in free and consensual association with the United States under the Constitution. "[I]ts sovereign status and functional independence from Congressional control—call with equal force for the special protection of the Commonwealth's citizens against unwarranted and otherwise insufficiently checked governmental action provided by 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3)." *Ortiz* v. *Hernandez*, 511 F. 2d 1080, 1082 (C.A. 1).

ARGUMENT

THE PEOPLE OF PUERTO RICO ARE PROTECTED BY 42 U.S.C. 1983 AND 28 U.S.C. 1343(3) AND (4)

A. *The Language of 42 U.S.C. 1983 and 28 U.S.C. 1343 Applies to Puerto Rico.*

The substantive statute invoked by appellees, Section 1983, provides a civil remedy against "[e]very

person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects * * * any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws * * *." Jurisdiction to enforce this statute is conferred on the federal district courts by 28 U.S.C. 1343(3),[4] which empowers those courts to redress "the deprivation, under color of any State law, * * * of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."[5]

[4] 28 U.S.C. 1343(4) confers jurisdiction upon the district courts over any action "[t]o recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote." This provision was added to the Judicial Code in the Civil Rights Act of 1957, 71 Stat. 637. Although characterized in the legislative history as a technical amendment to the Code designed to conform it to the 1957 Act (H.R. Rep. No. 291, 85th Cong., 1st Sess. 11 (1957)), it has not been confined to voting rights. *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409, 412, n. 1. Section 1983 is plainly a federal statute providing for the protection of civil rights, and jurisdiction under Section 1343(4) may be predicated on it in this case at least to the same extent it exists under Section 1343(3). Indeed, it is literally broader than Section 1343(3) since it is not limited to deprivations "under color of any State law * * *." Thus even if Section 1343(3) were held inapplicable to the Commonwealth, Section 1983 could be enforced there under Section 1343(4).

[5] While Section 1983 creates a substantive claim for relief, it does not, in and of itself, confer jurisdiction upon the federal district courts. That function is performed by Section 1343(3). *Hagans* v. *Lavine*, 415 U.S. 528, 535.

Persons residing in Puerto Rico are unquestionably citizens or persons "within the jurisdiction of the United States" under Sections 1983 and 1343(3). The Commonwealth, however, in effect denies that, for purposes of Section 1983 and its jurisdictional counterpart, its officials, in carrying out its laws, are acting "under color of" the laws of any "State or Territory."

The meaning of the term "State or Territory" as applied to entities such as the District of Columbia and the Commonwealth "depends upon the character and aim of the specific provision involved." *Carter, supra,* 409 U.S. at 420; *Puerto Rico* v. *Shell Co.,* 302 U.S. 253, 257–259 (Section 3 of the Sherman Act applies to Puerto Rico as a "territory"); *Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 416 U.S. 663, 669–676 (statutes of Puerto Rico are state statutes for purposes of 28 U.S.C. 2281). The history of Section 1983 and Section 1343(3) confirm that their "character and aim" render them applicable to Puerto Rico in its present Commonwealth status.

B. *The History of Sections 1983 and 1343(3) is Consistent With Their Application to Puerto Rico.*

Section 1983 is derived from Section 1 of the Civil Rights Act of 1871, 17 Stat. 13. Its original purpose was to enforce the Fourteenth Amendment in the States (*Carter, supra,* 409 U.S. at 423; *Lynch* v. *Household Finance Corp.,* 405 U.S. 538, 545; *Monroe* v. *Pape,* 365 U.S. 167, 171). It was extended to federal territories, however, in 1874, presumably under Con-

gress' power to regulate the territories under Article IV, Section 3, clause 2, to assure equal protection of the laws under the Due Process Clause of the Fifth Amendment. *Carter, supra,* 409 U.S. at 423–424.

The 1871 enactment defined the substantive claim and the lower courts' jurisdiction in the same section. When Congress codified existing law in 1874, the substantive and jurisdictional provisions were separated, and the phrase "or Territory" was added to the substantive provision (Rev. Stat. 1979) without explanation. *Lynch* v. *Household Finance Corp., supra,* 405 U.S. at 543–544, n. 7; *District of Columbia* v. *Carter, supra,* 409 U.S. at 424, n. 11. No reference to "Territories" was added, however, to the jurisdictional provisions (Rev. Stats. 563(12), 629(16)), and the difference was not expressly noted. See 1 Revision of U.S. Stat., Title XIII, pp. 317, 359 (1872 draft).

The difference between the substantive and jurisdictional provisions, with respect to acts under the color of the law of any territory, was not intended as a jurisdictional limitation. Obviously, it would have been irrational for Congress expressly to extend the substantive provision to the territories, but simultaneously to confine jurisdiction to violations under color of state law. Instead, as shown by comparison of the provisions of the Revised Statutes defining the jurisdiction of the district and circuit courts and the jurisdiction of the territorial courts, Congress intended that the territorial courts would exercise, within their geographic areas, the same jurisdiction under federal law that the district and

597-896—75——2

circuit courts exercised in the states, which included jurisdiction to enforce what is now Section 1983.[8]

Moreover, this Court has indicated that despite differences in their wording, Sections 1983 and 1343(3) are to be construed identically. *Lynch* v. *Household Finance Corp., supra,* 405 U.S. at 543–544 n. 7. See Hart and Wechsler, *The Federal Courts and the Federal System* 961 (2d ed. 1973). Thus, by 1874, the lower federal courts in the States and federal Territories had jurisdiction over a new federal remedy to protect individual rights secured by the Constitution against deprivations by State or Territorial officials acting under color of local law.

This new federal remedy was adopted despite the fact that the states had local court systems whose judges were sworn to uphold the federal Constitution,

[8] The district and circuit courts' geographic jurisdiction was confined to the states (Rev. Stats. 530–559, 551, 608 (1874)), except that the district courts in California and Oregon had certain jurisdiction over Alaska. Rev. Stat. 1957 (1874). Deprivations of rights under color of territorial law, therefore, would ordinarily not come before them. In the territories other than Alaska (*i.e.*, New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming), the territorial courts of the day exercised local common law and chancery jurisdiction (Rev. Stats. 1865–1868 (1874)), and "the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the circuit and district courts of the United States * * *" (Rev. Stat. 1910 (1874); for Washington Territory, see Section 1911 as corrected in 1878). Thus, the revisors must have intended the territorial courts to have the same jurisdiction to remedy deprivations of rights under the color of territorial law under Rev. Stat. 1979 (1874) that the lower federal courts in the states already had under Rev. Stats. 563(12) and 629(16) (1874) to remedy deprivations under color of state law.

and whose tribunals were vested with the jurisdiction necessary to do so. The federal remedy was independent of any state remedies, and their availability is no barrier to suit in federal court. *Monroe* v. *Pape, supra,* 365 U.S. at 183. Moreover, although originally enacted because of conditions in the post-Civil War South, the law was generally worded to protect all persons in the jurisdiction of the United States. *Ibid.* Thus, the Commonwealth's contentions that its courts are able and willing to protect civil rights, and that the conditions which led to enactment of the federal remedy have never existed in Puerto Rico (Com. Br. 11–12) are beside the point.[7]

Congress created an independent federal remedy because it concluded that it could not rely on the state courts to vindicate essential rights arising under the Constitution and federal laws. *Carter, supra,* 409 U.S. at 426–629. See *Zwickler* v. *Koota,* 389 U.S. 241, 245–248. Since the territories engaged in legislative activities almost as broad as those of the states, and practical control by Congress under Article IV was not feasible because of the distances involved, a similar remedy was deemed necessary in the territories. *Carter, supra,* 409 U.S. at 430–431.

C. *Fundamental Constitutional Rights Apply to the People of Puerto Rico.*

In 1874, of course, Puerto Rico was not within the

[7] Nor does the availability of strong due process and equal protection guarantees in the Constitution of the Commonwealth foreclose the federal remedy. *Monroe* v. *Pape, supra,* 365 U.S. at 183. Cf. *Home Telephone and Telegraph Co.* v. *City of Los Angeles,* 227 U.S. 278.

jurisdiction of the United States. But upon its acquisition from Spain by the Treaty of Paris following the Spanish-American War (30 Stat. 1754), its people came within the Constitution's fundamental protection of individual rights. This was recognized in Congress when the Foraker Act, providing special tariff treatment and a civil government for the island, was debated and adopted in 1900 (31 Stat. 77),[8] and by this Court. *Downes* v. *Bidwell,* 182 U.S. 244, 283–284; *Balzac* v. *Porto Rico,* 258 U.S. 298, 312–313.

[8] Debate over the Foraker Act was initially focused in the House on whether a tariff could be provided for the importation of Puerto Rican goods into the United States and American goods into Puerto Rico, the proceeds to be used for the benefit of the government of Puerto Rico. The debate concerned the constitutionality of the bill under Article I, Section 8, clause 1, of the Constitution, which requires that all duties shall be uniform throughout the United States. The question therefore was whether Puerto Rico was part of the United States for purposes of this requirement. In the House, Representative Payne, the bill's leading proponent and Chairman of the Committee on Ways and Means, argued that the bill was necessary, and further contended that until the people of Puerto Rico were ready for American citizenship, "give them all the rights accorded to our own people under the Constitution, consistent with their best interest and well-being." 33 Cong. Rec. 1946 (1900). In the Senate, extensive provisions for a civil government were added to the tariff bill. The Senate Committee believed that the people of Puerto Rico were entitled to the privileges and immunities of citizenship, and accordingly proposed to grant them citizenship. S. Rep. No. 249, 56th Cong., 1st Sess. 8 (1900). See also 33 Cong. Rec. 2473–2474, 2658–2659 (1900). The grant of citizenship was later deleted (33 Cong. Rec. 3690 (1900)) on the theory that it might render the tariff provision unconstitutional. Nevertheless, the Foraker Act expressly provided in Section 14 that "the statutory laws of the United States not locally inapplicable, * * * shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws * * *." 31 Stat. 80 (see p. 21, n. 16, *infra*).

When the question of the validity of the tariff imposed by the Foraker Act came before this Court in 1901, it held that Puerto Rico was not part of the United States within the revenue clauses of the Constitution. *Downes* v. *Bidwell, supra.* Nevertheless, the Court cautioned that the people of Puerto Rico, even though then aliens, were within the jurisdiction of the United States for purposes of the Constitution's fundamental guarantees of individual rights, including due process and equal protection of the laws. In the opinion announcing the Court's judgment, Mr. Justice Brown observed (182 U.S. at 283):

> Whatever may be finally decided by the American people as to the *status* of these islands and their inhabitants—whether they shall be introduced into the sisterhood of States or be permitted to form independent governments—it does not follow that, in the meantime, awaiting that decision, the people are in the matter of personal rights unprotected by the provisions of our Constitution, and subject to the merely arbitrary control of Congress. Even if regarded as aliens, they are entitled under the principles of the Constitution to be protected in life, liberty and property. [Emphasis in original.[9]]

A generation later, the Court, in *Balzac* v. *Porto Rico, supra,* emphasized that "[t]he Constitution of the United States is in force in Porto Rico as it is wherever and whenever the sovereign power of that

[9] See also 182 U.S. at 291, 294 (Justices White, Shiras and McKenna, concurring).

government is exerted. * * * The guaranties of certain fundamental personal rights declared in the Constitution, as for instance that no person could be deprived of life, liberty or property without due process of law, had from the beginning full application in the Philippines and Porto Rico * * *." 258 U.S. at 312-313. Accord, *Calero-Toledo* v. *Pearson Yacht Leasing Co., supra,* 416 U.S. at 668–669, n. 5; *Mora* v. *Mejias,* 206 F. 2d 377, 382 (C.A. 1).[10]

In 1917 Congress conferred United States citizenship upon the citizens of Puerto Rico and codified a Bill of Rights for them in the Jones Act, 39 Stat. 951. This statute governed the islands' status until 1947, when legislation was adopted providing for the popular election of the governor and declaring that "[t]he rights, privileges, and immunities of citizens of the United States shall be respected in Puerto Rico to the same extent as though Puerto Rico were a State of the Union * * *." 61 Stat. 772–773.[11]

[10] Section 1891 of the Revised Statutes (1878) provided that "[t]he Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized as elsewhere within the United States."

The Foraker Act, unlike the Act establishing a civilian government for the Philippines, 32 Stat. 691, did not explicitly render this provision inapplicable to Puerto Rico. Rev. Stat. 1891 is mentioned in the opinion of Mr. Justice Brown in *Downes* v. *Bidwell, supra,* 182 U.S. at 257, but was not relied upon.

[11] Section 8 of the 1947 legislation, containing the privileges and immunities language, was added by the Senate to H.R. 3309, 80th Cong., 1st Sess. (1947). The Senate Committee explained that its purpose was to bring Puerto Rico expressly within the operation of the Comity Clause [of Article IV, Section 2, of the Constitu-

The application to Puerto Rico of the Constitution's fundamental individual rights was not changed by the creation of the Commonwealth between 1950 and 1952. This arrangement, "in the nature of a compact," was offered to and accepted by the people of Puerto Rico under P.L. 600, 64 Stat. 319, 48 U.S.C. 731b–731d. The Constitution of the Commonwealth adopted by the Puerto Rican people under P.L. 600 recites in its preamble that it is created "within our union with the United States of America," and declares among the "determining factors in our life, our citizenship of the United States * * * and * * * our loyalty to the principles of the federal Constitution * * *." [See note following] 48 U.S.C. 731d. When Congress approved this Constitution under P.L. 600, it conditioned its ratification on a requirement that any amendment or revision should be consistent with "the applicable provisions of the Constitution of the United States." 66 Stat. 327.[12]

Thus, both before and after Commonwealth status, the fundamental personal guarantees of the Constitution have applied with full force in Puerto Rico.[13]

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tion] so as to leave no doubt that there may be no discrimination against citizens of the United States who are not residents of Puerto Rico. See S. Rep. No. 422, 80th Cong., 1st Sess. 3–4 (1947); 93 Cong. Rec. 10402 (1947) (remarks of Senator Butler).

[12] See also *Calero-Toledo*, *supra*, 416 U.S. at 671–672. And see *Status of Puerto Rico*, Report of the United States-Puerto Rico Commission on the Status of Puerto Rico, pp. 31–37 (1966); Leibowitz, *The Applicability of Federal Law to the Commonwealth of Puerto Rico*, 56 Geo. L.J. 219, 221 (1967); Magruder, *The Commonwealth Status of Puerto Rico*, 15 U. Pitt. L. Rev. 1 (1953).

[13] On August 1, 1975, the Ad Hoc Advisory Group on Puerto Rico, established under P.L. 88–271, 78 Stat. 17, approved a "Compact of Permanent Union between Puerto Rico and the United States," to be recommended to the President of the United States and the Governor of Puerto Rico (hereinafter, "Recommended Compact"). This recommendation, if adopted, would effect numerous changes in the present status of Puerto Rico. However, it would continue to recognize the applicability of the Constitution and laws of the United States, leaving to this Court the final decision "whether the laws of the United States or of Puerto Rico conform to this Compact and the Constitution and applicable laws of the United States." Recommended Compact, Art. 2(c)(4). Laws of the United States applicable to Puerto Rico on the date of the approval of the Recommended Compact would continue in effect except to the extent incompatible with it or expressly modified. Recommended Compact, Art. 12.

We next show that to secure these and other federal rights, Congress established a federal district court in Puerto Rico, independent of the local courts, with the same powers and responsibilities as federal courts on the mainland. This necesarily included, and continues to include, jurisdiction under Section 1343(3) to grant relief, pursuant to Section 1983, for deprivations of fundamental personal rights by Commonwealth officials acting under color of the Commonwealth's laws.

D. *The Federal District Court in Puerto Rico has Long Been Empowered to Enforce Section 1983.*

A federal district court, separate and distinct from the existing local court system, was established in Puerto Rico simultaneously with the initiation of American civil government. Congress was aware that the Constitution's fundamental guarantees of personal rights would apply (see discussion, *supra*, pp. 12–16), "and, as this guaranty is one of the most fruitful in causing litigation in our own country, pro-

vision was naturally made for similar controversy in Porto Rico." *Balzac* v. *Porto Rico, supra*, 258 U.S. at 313. The Foraker Act recognized the courts and tribunals of Puerto Rico "as already established," but provided in addition for a "district court of the United States for Porto Rico" which in addition to the ordinary jurisdiction of the district courts of the United States, was to have "jurisdiction of all cases cognizant in the circuit courts of the United States." 31 Stat. 84. Thus from 1900, the federal court in Puerto Rico had, by reference to existing statutes, the same original jurisdiction as the lower federal courts in the States on the mainland, except as otherwise specifically provided. *Munoz* v. *Porto Rico Ry. Light & Power Co.*, 83 F. 2d 262, 264–266 (C.A. 1), certiorari denied, 298 U.S. 689. Those courts had jurisdiction to hear all claims under the predecessors of Sections 1983 and 1343(3),[14] including claims of deprivations of constitutional rights under color of territorial law. See Rev. Stat. 1979 (1874).

The 1917 Organic Act continued this jurisdiction. It provided simply that the federal district court in Puerto Rico "shall have jurisdiction of all cases cognizable in the district courts of the United States,

[14] Both the district courts and circuit courts had original jurisdiction over such suits, although after the 1874 codification the circuit courts' jurisdiction appeared limited to equal protection claims. Compare 17 Stat. 13, with Rev. Stats. 563(12) and 629(16). The circuit courts' original jurisdiction was transferred to the district courts in 1911. 36 Stat. 1087. See *Lynch* v. *Household Finance Corp.*, *supra*, 405 U.S. at 543–544, n. 7.

and shall proceed in the same manner." 39 Stat. 965.

The jurisdiction of the district court was not repealed or modified when the Commonwealth was established. It was continued under the Puerto Rico Federal Relations Act, which contains those sections of the 1917 Organic Act not repealed by P.L. 600, 64 Stat. 319. See note following 28 U.S.C. 119.[15] Indeed, fourteen years after the Commonwealth was proclaimed, Congress adopted legislation confirming that the United States District Court for Puerto Rico is identical in responsibilities with district courts on the mainland. It also conferred the same life tenure on judges of the District of Puerto Rico as held by all other judges in the federal district courts. 80 Stat. 764.

The House Committee which reported the life tenure bill (H.R. 3999, 89th Cong., 1st Sess. (1965)) expressly noted the identity of jurisdiction between the district court for Puerto Rico and federal district courts in the States, and the importance of maintaining a federal forum in Puerto Rico, independent of the Commonwealth government, which would assure protection of federal rights (H.R. Rep. No. 135, 89th Cong., 1st Sess. 2–3 (1965)):

> The U.S. district court in Puerto Rico is in its jurisdiction, power and responsibilities the same as the U.S. district courts in the several

[15] The jurisdiction of the United States district court would continue under Article 16 of the Recommended Compact (*supra*, n. 13, p. 17).

States. It exercises only Federal jurisdiction, the local jurisdiction being exercised by a system of local courts headed by a Supreme Court of the Commonwealth of Puerto Rico.

* * * * *

Moreover, Federal litigants in Puerto Rico should not be denied the benefit of judges made independent by life tenure from the pressures of those who might influence his chances of reappointment, which benefits the Constitution guarantees to the litigants in all other Federal courts. These judges in Puerto Rico have and will have the exacting same heavy responsibilities as all other Federal district judges and, therefore, they should have the same independence, security, and retirement benefits to which all other Federal district judges are entitled.

* * * * *

Finally, the Commonwealth of Puerto Rico is a free state associated with and subject to the Constitution and laws of the United States, but not a State of the Union. It has virtually complete local autonomy and it seems proper, therefore, to accord it the same treatment as a State by conferring upon the Federal district court there the same dignity and authority enjoyed by the other Federal district courts. Another reason for providing life tenure for the judges of the U.S. District Court for Puerto Rico is that the court is now the only judicial agency in Puerto Rico which is independent of the Commonwealth government and it will aid the district judges to perform their functions impartially, particularly in those cases involving the Federal Government on one side and the Commonwealth government on the other if they have the full independence inherent in a life tenure appointment.

In the light of this history, as well as the statute's express reference to territories, we submit that Section 1983 was enforceable in the federal district court in Puerto Rico before Commonwealth status, and that court's jurisdiction under Section 1343(3) was not repealed, either expressly or by implication, when P.L. 600 was implemented.

The Commonwealth seems to contend (Br. 8, 9) that jurisdiction under Section 1343(3) is so irreconcilably inconsistent with Commonwealth status as to support the conclusion that the district court's jurisdiction was repealed by implication as a result of P.L. 600 and the joint resolution which ratified the Commonwealth's constitution. We submit, however, that since P.L. 600 did not purport to modify the district court's jurisdiction and Congress in 1966 conferred life tenure to assure federal litigants a judicial agency independent of the Commonwealth government, it would be inconsistent with the legislative purpose to infer a repeal.[16]

[16] The Commonwealth does not contend that the exception in Section 9 of the 1917 Organic Act, 39 Stat. 954, which was continued in effect in the Puerto Rico Federal Relations Act, 48 U.S.C. 734, affects the jurisdiction of the district court. This statute declares that "statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States * * *." In any event, the protection of the civil rights of the inhabitants of Puerto Rico under the Constitution is not of purely local concern, since it results directly from the Commonwealth's participation in the federal system. Cf. *Cæribtow Corp.* v. *Occupational Safety and Health Review Commission*, 493 F. 2d 1064 (C.A. 1). See also *United States* v. *Price*, 383 U.S. 787, 806.

E. *The Commonwealth's Status is Not Analogous to that of the District of Columbia for Purposes of Section 1983.*

The Commonwealth rests its argument on *Carter,* which held that the District of Columbia is not a "State or Territory" within the meaning of Section 1983, because it is "*sui generis*" in the federal system. We submit, however, that the reasoning of *Carter* points in the opposite direction.

As to the argument that Puerto Rico is not a State under the Fourteenth Amendment, we submit that, as pointed out in *Carter,* Section 1983 is not only an exercise of Congress' power under the Fourteenth Amendment, but, as applied to the territories, it was an exercise of Congress' powers under Article IV to assure equal protection of the laws under the Due Process Clause. 409 U.S. at 423–424. The fundamental requirements of due process, whether under the Fifth or Fourteenth Amendments, bar the denial under color of government authority of equal protection of the laws.[11] Section 1983 literally applies to both states and territories, so that unconstitutional discrimination by Commonwealth officials can be reached thereunder whether viewed, for purposes of the statute, as action "under color of" the laws of a State or a Territory.

Second, although Puerto Rico occupies a *sui generis* position in the federal system, it is not analogous to the District of Columbia. The District is a permanent

[11] *Bolling* v. *Sharpe*, 347 U.S. 497; *Shapiro* v. *Thompson*, 394 U.S. 618, 641–642; *Schneider* v. *Rusk*, 377 U.S. 163, 168; *Frontiero* v. *Richardson*, 411 U.S. 677, 680, n. 5 (opinion of Brennan, J.).

constitutional entity under the direct control of Congress (Art. I, Sec. 8, cl. 17) designated as the seat of the national government. *Carter, supra,* 409 U.S. at 432. Puerto Rico is presently associated with the United States by consensual arrangements "in the nature of a compact" (48 U.S.C. 731b), which Congress is empowered to enter into under Art. IV, Sec. 3, of the Constitution. Before obtaining Commonwealth status, Puerto Rico was quite plainly a territory within the meaning of Section 1983. Its geographical separation from the seat of government and the extent of its self-government brought it within the spirit, as well as the letter, of that statute. This was not true of the District. In *Carter*, the Court reasoned that, like officials of the federal government itself, the District's officials were under the direct observation, supervision and control of Congress. There was, therefore, no need for special legislation to provide a judicial safeguard against denial by District officials of individual rights secured by the Constitution. State officials, however, were not subject to such control. And, as a practical matter, effective and detailed control by Congress over the distant territories was also infeasible; in consequence, the territories' exercise of local self-government was nearly as broad as that of the States. The same was, and is, true of Puerto Rico. Accordingly, the considerations that led Congress to bring the states and territories, but not the District, within Section 1983 apply equally to Puerto Rico.

After Commonwealth status, "Puerto Rico [did] not become a State in the federal Union like the 48 states, but it would seem to have become a State within a common and accepted meaning of the word." *Mora* v. *Mejias*, 206 F. 2d 377, 387 (C.A. 1), quoted with approval in *Calero-Toledo* v. *Pearson Yacht Leasing Co., supra,* 416 U.S. at 672. The Commonwealth's special status and constitution have made it basically similar to the States in being "sovereign over matters not ruled by the [federal] Constitution" (*Stainback* v. *Mo Hock Ke Lok Po,* 336 U.S. 368, 378). See *Calero-Toledo, supra,* 416 U.S. at 673. Thus, the considerations that led the Court in *Calero-Toledo* to classify the Commonwealth as a state for purposes of the three-judge statute (28 U.S.C. 2281) also apply to Sections 1983 and 1343(3). As Judge Aldrich explained for the First Circuit (*Ortiz* v. *Hernandez Colon,* 511 F. 2d 1080, 1082):

> [T]he very reasons which called in *Calero Toledo* for the Commonwealth's special protection by a three-judge district court as a matter of comity and respect—its sovereign status and functional independence from Congressional control—call with equal force for the special protection of the Commonwealth's citizens against unwarranted and otherwise insufficiently checked governmental action provided by 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3).
>
> The citizens of the several states are permitted to seek redress in the federal courts for deprivation of their rights under color of state law without first seeking relief in the state courts. *Monroe* v. *Pape*, 1961, 365 U.S. 167, 183, 81 S.Ct. 473, 5 L.Ed.2d 492. We yield to no one in our regard for the Supreme Court of Puerto Rico, but at the same time, if citizens of the several states may call for an initial decision in the district court without deferring to the courts of their local state, we must wonder how we could conscientiously hold that under 28 U.S.C. § 1343 United States citizens resident in Puerto Rico are any less entitled.

In summary, therefore, we submit that as a state, in the ordinary sense of the term, which is in free and consensual association with the United States,[18] Puerto Rico continues to be subject to the guarantees of individual rights which the federal Constitution ensures to all who live in Puerto Rico, whether its status be viewed as that of a "state" or "territory" for purposes of Section 1983. Moreover, the federal district court in Puerto Rico has the same jurisdiction and responsibility for the protection of those rights as the federal courts on the mainland. Like the States, the Commonwealth has its own court system which is required to enforce the Constitution. Despite this, Congress considered the availability of a federal forum, independent of the Commonwealth government, to be of prime importance. See pp. 19–20,

[18] The literal translation of the Commonwealth's official name in Spanish—El Estado Libre Asociado de Puerto Rico—is the "Free Associated State of Puerto Rico." The official translation—the "Commonwealth of Puerto Rico"—was adopted to differentiate Puerto Rico from the States of the Union. Magruder, *supra*, 15 U. Pitt. L. Rev. at 14, n. 92. The Recommended Compact, *supra*, n. 13, p. 17, would adopt the literal translation as the official name. Art. 1.

supra. When Congress, in adopting the legislation now reflected in Sections 1983 and 1343, provided a separate federal tribunal for the protection of rights secured by the Constitution, it "imposed the duty upon all levels of the federal judiciary to give due respect to a suitor's choice of a federal forum for the hearing and decision of his federal constitutional claims." *Zwickler* v. *Koota*, 389 U.S. 241, 248. That duty remains in full force in Puerto Rico."[19]

CONCLUSION

For the reasons stated, we believe that 42 U.S.C. 1983 and 28 U.S.C. 1343(3) and (4) apply in the Commonwealth of Puerto Rico.

Respectfully submitted.

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[19] The Department of Justice has filed cases and obtained convictions in Puerto Rico under 18 U.S.C. 242, the criminal counterpart to Section 1983. See *United States* v. *Price*, 383 U.S. 787, 794, n. 7. Like Section 1983, Section 242 was broadened in the 1874 revision of the federal statutes. *Id.* at 803. It protects inhabitants of "any State, Territory, or District" from willful deprivations of federal rights under color of law.